

Filed 11-19-87 to Court House

ORDINANCE NO. 4
Series 1987

AN ORDINANCE granting to CP National Corporation the right to place, erect and maintain poles, wires, and other appliances and conductors for the transmission and distribution of electricity in, upon and under the streets, alleys, avenues, thoroughfares and public highways in the City of Elgin, Oregon, and to exercise the privilege of engaging in the general business of generating, transmitting and distributing electrical energy, for a term of fifteen (15) years.

THE CITY OF ELGIN ORDAINS AS FOLLOWS:

Section 1. The City of Elgin, hereinafter referred to as the City, hereby grants to CP National Corporation, hereinafter referred to as the Grantee, the right and privilege to place, erect, lay, maintain, and operate in and over the streets, alleys, avenues, thoroughfares, and public highways within said city, poles, wires and other appliances and conductors for the generation, transmission and distribution of electricity for domestic, commercial and industrial use; such wires or conductors above referred to may be strung upon poles and other fixtures above ground, or may be laid underground in conduits or pipes or otherwise protected, and such other apparatus may be used as may be necessary or proper to operate and maintain the same.

Section 2. All construction of transmission and distribution lines, erection of poles, location and installation of guy wires, protection and installation of all wires with which the public may come in contact, and construction and maintenance of transmission and distribution lines, substations, transformers and equipment of every kind and description within the city limits of the said City of Elgin shall be done in accordance with the electrical code of the State of Oregon in effect at the time that such work is done and in accordance with the usual practice of light and power companies in the construction and maintenance of such type of property and such reasonable regulations as the city may adopt, and in full accord with such codes, rules and regulations as may from time to time be adopted by the electrical industry covering the manner of construction, maintenance, installation and use of transmission and distribution lines and generating equipment in the sale and distribution of electrical energy.

Section 3. The Grantee may trim trees which overhang the streets, alleys, and other public places in the manner and to the extent necessary to provide adequate clearance for the Grantee's facilities. All trimming shall be done in strict conformity with any regulations heretofore or hereafter promulgated by the City.

Section 4. It shall be lawful for the said Grantee, after having received permission therefor from the Street Commissioner of the City of Elgin, and not otherwise, to make all needful excavations in any of said streets, alleys, avenues, thoroughfares, and public highways for any of the purposes aforesaid. Said work shall be done in compliance with the necessary rules, regulations, order or ordinances which may during the continuation of this franchise be adopted from time to time by the Common Council of said City. Such plans and specifications as may be necessary for the performance of such work shall be furnished by the Grantee herein without expense to the said City. Whenever the said Grantee shall disturb any of the streets, alleys, avenues, thoroughfares or public highways for any of purposes aforesaid, it shall restore the same in as good condition and order as they were theretofore as soon

as practicable, and failing to do so, the City of Elgin may fix a reasonable time within which restoration shall be completed, and upon failure to comply with such order of said City, may cause such restoration to be made at the expense of said Grantee.

Section 5. In the construction of any public improvement by or under the authority or direction of said City, and said Grantee shall, without cost to said City, move any of its poles, wires, appliances, conductors or other apparatus and equipment upon demand of the Common Council of said City. The Grantee shall temporarily raise, lower or remove its facilities upon any street or alley within the City when necessary in order to permit any person authorized by the City to move any building, machinery or other object across or along such street or alley. However, the cost to the Grantee of the temporary raising, lowering or removal, and of any interruption of the Grantee's service to its customers caused thereby, shall first be paid or reasonably secured to the Grantee by the owner or mover of the building, machinery or other object. The raising, lowering or removal shall be in accordance with all applicable ordinances and regulations of the City.

Section 6. It is hereby declared that the Common Council of the City of Elgin estimates that the fair compensation for this franchise is a sum equal to three and one-half ($3\frac{1}{2}$) per centum of the gross earnings, less net uncollectibles, of the Grantee derived from the sale of electrical energy to its patrons now or hereafter located within the City of Elgin, and does specify that said sum shall be due semi-annually on the sixteenth (16th) day of May, and November of each year during the life of this franchise to the said City by the Grantee in part consideration therefor. Such three and one-half percent ($3\frac{1}{2}\%$) payments made by the Grantee will be accepted by the City of Elgin from the Grantee if the Grantee accepts this franchise in lieu of any further license, privilege, or occupation tax, or fee for revenue or regulation of the City of Elgin which may now or hereafter be imposed by ordinance of the City of Elgin during the term of this franchise. Gross revenues shall include revenues from the use, rental or lease of operating facilities of the Grantee other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgages, securities or stocks, sales at wholesale to another utility when the utility purchasing the service is not the ultimate consumer, revenue from joint pole use, revenue paid by the United States of America or any of its agencies. The said Grantee shall maintain an office within the boundaries of Union County, Oregon, in which it shall have available at all times records showing the amount of its gross earnings within the City of Elgin. Said records shall at all reasonable times be subject to inspection and examination by a duly authorized agent or representative of the said City.

The franchise fee payment of three and one-half per cent ($3\frac{1}{2}\%$) of the gross operating revenue shall be subject to renegotiation by the parties on the fifth (5th) and tenth (10th) anniversary of the franchise. Negotiations shall be opened by the Grantee or the City by sending a certified letter requesting renegotiations thirty (30) days prior to the anniversary date of the franchise.

Section 7. The right, privileges and franchises hereby granted to the said CP National Corporation, its successors and assigns, shall continue and be in full force

and effect for the full period of fifteen (15) years from and after the taking effect of this ordinance, including the acceptance hereof, subject to the faithful performance of all terms, conditions and restrictions herein and of the Charter of the City of Elgin, Union County, Oregon, now in effect, except so far as such terms may be modified or superseded by the Constitution or laws of the State of Oregon or of the United States.

Section 8. This privilege shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee, but this privilege and the rights granted under this ordinance either by sale, merger, consolidation, operation of law or otherwise cannot be assigned by the Grantee without first obtaining the consent of the City thereto in writing as expressed by an ordinance, which consent shall not, upon agreement of Assignee to be bound by all the terms of this franchise, be unreasonably withheld.

However, the Grantee, without securing approval of the City, may execute mortgages or trust indentures upon the properties of the Grantee if given to secure bonds or other bona fide indebtedness of the Grantee.

Section 9. The franchise hereby granted shall not be exclusive, and the City of Elgin expressly reserves the right to grant similar rights and privileges to others.

Section 10. The Grantee and its successors and assigns shall hold the City of Elgin harmless from all expense or liability arising from any negligent act or omission of the Grantee in the conduct of its operations hereunder.

Section 11. This ordinance shall be inoperative unless an acceptance in writing thereof shall be filed with the Recorder of the City of Elgin within thirty (30) days after the passage of this Ordinance.

Section 12. The rights, privileges, terms and payments specified in the Ordinance shall commence and be in full force and effect from and after the 9th day of September, 1987, and continuing during the life of the franchise.

Signed by the Mayor this 8th day of September, 1987.

P. Juan Corvan
Mayor, City of Elgin

Attest:

Sally Hader
Recorder, City of Elgin